

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

KENNY BEANE,

Plaintiff,

v.

JOHN B. KEMP, JR.,

Defendant.

No. 11-0428-DRH

ORDER

HERNDON, Chief Judge:

This matter comes before the Court on Beane's motion for leave to proceed in forma pauperis on appeal (Doc. 11). Based on the following, the Court denies the motion for leave to proceed in forma pauperis.

On May 23, 2011, Kenny Beane filed a complaint against John B. Kemp, Jr (Doc. 1) and a motion to proceed in forma pauperis (Doc. 2). After reviewing the pleadings, the Court set this matter for hearing on the motion to proceed in forma pauperis. On June 16, 2011, the Court held the hearing and orally dismissed with prejudice Beane's claims as frivolous and for failure to state a claim. That same day, the Clerk of the Court entered judgment reflecting the same. On June 22, 2011, Beane filed his notice of appeal (Doc. 7). The Court construed the notice of appeal as also containing a motion to proceed in forma pauperis on appeal (Doc. 11).

Federal Rule of Appellate Procedure 24(a) provides in part:

Except as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:

- (A) shows in detail prescribed by Form 4 of the Appendix of Forms, the party's inability to pay or to give security for fees and costs;
- (B) claims an entitlement to redress; and
- (C) states the issues that the party intends to present on appeal.

"An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). A plaintiff is "acting in bad faith in the more common legal meaning of the term . . . [when he sues] . . . on the basis of a frivolous claim, which is to say a claim that no reasonable person could suppose to have any merit." *Lee v. Clinton*, 209 F.3d 1025, 1026 (7th Cir. 2000). Further, "an appeal in a frivolous suit cannot be 'in good faith' under § 1915(a)(3), because 'good faith' must be viewed objectively." *Moran v. Sondalle*, 218 F.3d 647, 650 (7th Cir. 2000). *See also Lee*, 209 F.3d at 1026; *Tolefree v. Cudahy*, 49 F.3d 1243, 1244 (7th Cir. 1995) ("[T]he granting of leave to appeal in forma pauperis from the dismissal of a *frivolous* suit is presumptively erroneous and indeed self-contradictory.").

Here, even construing his motion liberally, Beane's motion to proceed in forma pauperis on appeal is insufficient. It does not contain information required under Form 4, does not state the issues on appeal and does not state an entitlement to redress. Moreover, the notice of appeal/motion to proceed in forma pauperis, much like the complaint and original motion to proceed in forma pauperis, is a nonsensical

rant. It is very hard to discern from his pleadings what Beane is complaining.

Further, this action was dismissed as frivolous and for failure to state a claim under 28 U.S.C. § 1915. As stated at the oral argument on the motion to proceed in forma pauperis, Beane's complaint is devoid of substantive allegations of wrongdoing by defendant Kemp. His allegations against Kemp do not rise to a constitutional violation despite Beane's belief to the contrary. Further, Beane has offered no argument indicating why this Court's conclusion was incorrect. A reasonable person could not suppose that the appeal has some merit, as is required in order for the appeal to be taken in good faith. Therefore, the Court **CERTIFIES** that this appeal is not taken in good faith.

Accordingly, the Court denies Beane's motion to proceed in forma pauperis on appeal (Doc. 11). The Court **DIRECTS** Beane to tender the appellate filing and docketing fee of \$455 to the Clerk of the Court in this District or Beane may refile his motion seeking leave to proceed in forma pauperis with the Seventh Circuit Court of Appeals.

IT IS SO ORDERED.

Signed this 29th day of June, 2011.



Digitally signed by David R.
Herndon
Date: 2011.06.29 11:09:40
-05'00'

**Chief Judge
United States District Court**